

BEFORE THE ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION

IN THE MATTER OF AMENDMENTS TO )  
REGULATION NO. 5, LIQUID ANIMAL WASTE )  
MANAGEMENT SYSTEMS )

DOCKET NO. 07-010R

PETITION TO INITIATE RULEMAKING FOR REGULATION NO. 5,  
LIQUID ANIMAL WASTE MANAGEMENT SYSTEMS

2007 OCT 12 FILED 3:53

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DEPARTMENT OF  
ENVIRONMENTAL  
QUALITY  
PQ

The Arkansas Department of Environmental Quality (hereinafter "Department" or "ADEQ") for its Petition to Initiate Rulemaking to Amend Regulation No. 5, states:

1. Several years have passed since the last update of Regulation No. 5. An update of the regulation was necessary to bring the regulation in line with current on-farm practices and procedures that the Department utilizes for other permitting programs.
2. In the spring of 2007, ADEQ convened a stakeholder workgroup to review the regulation and the proposed amendments found in this rulemaking. The workgroup was comprised on industry representatives and representatives from state and federal agencies that provide technical assistance to permit holders regarding waste management plans.
3. Based on the comments of the workgroup, the Department proposed the following amendments to Regulation No. 5:
  - a. The usage of the "Section" is changed to "Reg." throughout the regulation to conform with the Arkansas Pollution Control and Ecology Commission's (hereinafter "Commission") Regulation Drafting Guidelines.

- b. All references to the Arkansas Soil and Water Conservation Commission are updated to reflect the name change of the agency to the Arkansas Natural Resources Commission.
- c. Reg. 5.104 is added to provide a policy of compliance for the regulation and state that, “Holders of existing permits shall achieve compliance with this regulation at the earliest practicable time, not to exceed five years from the effective date of the regulation.”
- d. Reg. 5.201 is amended to state that Site Management Plans and Waste Management Plans in areas designated as Nutrient Surplus Areas by the Arkansas Natural Resources Commission “must be certified by the Arkansas Natural Resources Commission (“ANRC”) in accordance with Ark. Code Ann. §15-20-1106 and ANRC Title 20, ‘Rules Governing the Arkansas Nutrient Management Planner Certification Program.’”
- e. Reg. 5.302 is amended to update the Permit Application Process and have the permitting procedures align with those found in the Commission’s Regulation No. 8, Administrative Procedures.
- f. Reg. 5.304 is amended to expand the available continuing education curricula to courses approved by ADEQ, not just those course developed by the University of Arkansas Cooperative Extension Service. This section is also amended to require continuing education credits in the areas of waste management and odor control “once every three (3) years.”
- g. Reg. 5.305 is proposed to be added to the regulation. This section sets forth the causes for modification and the procedure for modification. The causes for

modification will include: 1) A greater than ten percent increase in the volume of animal waste, as excreted, generated by the facility over what was allowed by the original permit or the last major modification for an increase in volume; 2) Addition of land application sites; or 3) Changes in waste treatment, type, handling, or disposal.

- h. Reg. 5.306 is proposed to be added to the regulation. This section will set forth the modifications that will be deemed minor modifications and can be accomplished administratively without public notice. Minor modifications will include:
  - i. Correction of typographical errors;
  - ii. Allowances for changes in ownership or operational control of a facility (transfer of the permit) where the Director determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittees has been submitted to the Director;
  - iii. Transfer of permitted land application sites to another permit for the same waste source;
  - iv. Addition of sites, not associated with a greater than ten percent increase in volume of waste as excreted, needed to provide more land to lower nutrient loadings in an effort to be proactive in environmental protection. Permittee must have an active confined animal feeding operation associated with the permit;
  - v. Removal of land application sites from a permit; or

- vi. Changes or practices not associated with a significant increase in storage volume in an effort to be proactive in environmental protection.
- i. Reg. 5.402 is amended to accurately reflect the name of the “Agricultural Waste Management Field Handbook.”
- j. Reg. 5.403 is amended to indicate that confined animal feeding operations existing as of 1992, and proposing to construct a liquid animal waste containment structure to reduce runoff to the waters of the State, shall be exempt from buffer zone siting requirements.
- k. Reg. 5.405 is amended to require that waste management plans are developed in accordance with all the provisions of Reg. 5.402. A new section (C) is added to Reg. 5.405 to require that waste management plans be reviewed annually by the operator. A new waste management plan shall be submitted to the Department when significant changes are necessary or required by ADEQ. The update plans shall include the soil analysis required by Reg. 5.407.
- l. Reg. 5.407(A) is amended to clarify that a daily log is shall be kept when land application is done.
- m. Reg. 5.407(B) is amended to include Soluble Phosphorous in the annual sample of the waste/wastewater being land applied.
- n. Reg. 5.407(C) is amended to require a soils analysis of land application sites at least once every five (5) years.
- o. Reg. 5.407(D) is amended to clarify, unless the regulation states otherwise, the sampling and analysis should be done according to guidelines developed by the

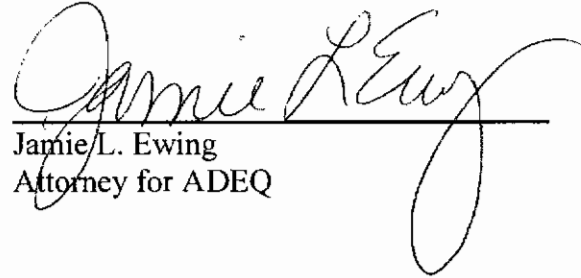
- University of Arkansas Cooperative Extension Service. This is to address a conflict between Extension guidelines and the requirements of Reg. 5.407(C).
- p. Reg. 5.602 is amended to state that composting plans may provide for composting at facilities that are permitted in accordance with the Commission's Regulation No. 22, Solid Waste Management Rules.
  - q. Reg. 5.701(B) is deleted. Upon review, this section was seen as impractical and unnecessary as the facility's waste management will be updated at least once every five (5) years.
  - r. Reg. 5.801 is amended to conform to the Commission's Regulation Drafting Guidelines. The intent and effect of the language is unchanged.
4. Jamie Ewing, attorney for ADEQ, and/or Steve Drown, Chief, ADEQ Water Division, will be available to answer questions concerning this proposed rulemaking. A version of the regulation showing the proposed changes is attached as Exhibit "A" and is hereby incorporated by reference. A copy of the Legislative Questionnaire is attached as Exhibit "B", a copy of a financial impact statement for the proposed revision is attached as Exhibit "C", a memo regarding the Department's compliance with Act 143 of 2007 is attached as Exhibit "D", and a copy of the Economic Impact/Environment Benefit Analysis is attached as Exhibit "E," all of which are hereby incorporated by reference. A proposed minute order is attached as Exhibit "F" and is hereby incorporated by reference.

WHEREFORE, the ADEQ requests that the Commission adopt the proposed Minute Order, and initiate the rulemaking on Regulation No. 5.

Respectfully submitted,

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